

### **REMARKS**

This Application has been carefully reviewed in light of the Final Office Action mailed September 22, 2004. At the time of the Final Office Action, Claims 10-15 were pending in this Application. Claims 1-9 and 16-21 were previously cancelled due to an election/restriction requirement. Claims 10-15 were rejected. Claims 10 and 15 have been amended to further define various features of Applicant's invention. Claim 13 has been cancelled without prejudice or disclaimer. New Claim 22 has been added. Applicant respectfully requests reconsideration and favorable action in this case.

#### **Objections under 37 CFR 1.83(a)**

Examiner has objected to the drawings for not showing every feature of the invention specified in the Claims under 37 CFR 1.83(a). Applicant submits that Claim 10 has been amended to overcome Examiner's objection related to the rail adjustment actuator. With respect to the objection to Claim 12 related to rails being aligned in different planes, multiple North/South and East/West rails are shown in FIGURE 11 and page 25 of the specification clearly specifies that the North/South tracks are at a first height and East/West tract are at a second, different height. Accordingly, Applicant submits that the limitations of Claim 12 are properly disclosed. Applicant requests reconsideration and favorable action.

#### **Rejections under 35 U.S.C. §103**

Claims 10, 12 and 14-15 were rejected under 35 U.S.C. §103(a) as being unpatentable over Japanese Patent No. 54-70505 filed by Michio Kitajima ("Kitajima") in view of U.S. Patent 5,797,330 issued to Zhengzhong Li ("Li"). Applicant respectfully traverses and submits that Kitajima and Li do not disclose all of the limitations of Claims 10, 12 and 14-15, as amended.

Examiner has cited to Kitajima as teaching "non-interconnected rails supported by a plurality of supports with rail adjustment actuators". However, applicants submit that because Kitajima is directed to a switching apparatus, Kitajima inherently must relate exclusively to rails that connect (and are thus interconnected). Accordingly, Kitajima does not appear to provide any disclosure or teaching related to "non-interconnected" rails.

Similarly, the Li reference is also limited to rails system where the rails are interconnected. The non-interconnect rails of the present invention provide advantages, such as not requiring switchin apparatus, which results in safety and reliability improvements.

Independent Claim 10 also recites the triangular shell filled with a support material. Neither Li nor Kitajima teach the use of a support material to fill a triangular shell. The rails of the Kitajima reference appear to be a solid material. The monorail tracks of Li appear to be hollow and do not specify a support material. Additionally, Applicant notes that the monorail track shown in Figure 1B is not triangular. Instead, Li shows a seven-sided track with an “inwardly recessed lower portion associated with the holding arrangement in order to accomodate the holding wheels 32.” See Col. 5, lines 49-52.

Claim 10 also recited a track that may support a specific dual use vehicle that supports a modular power module that is removed for rail travel and replaced after exiting the rail.

For at least the reasons cited above, Li and Kitajima do not teach all of the elements of Independent Claim 10. In order to establish a prima facie case of obviousness, the references cited by the Examiner must disclose all claimed limitations. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974). Accordingly, Applicant requests reconsideration, withdrawal of the §103 rejection under Li and Kitajima, and allowance of Claim 10 and Claims 12 and 14-15 which depend therefrom.

Claim 11 was rejected under 35 U.S.C. §103(a) as being unpatentable over the prior art as applied to Claim 10 above, and further in view of U.S. Patent 4,018,410 issued to Charley Renaux (“Renaux”). Applicant respectfully traverses and submits that Claim 11 depends from Claim 10, which has now been placed in condition for allowance. Applicant requests withdrawal of the §103 rejection, and full allowance of Claim 11.

**CONCLUSION**

Applicant has now made an earnest effort to place this case in condition for allowance in light of the amendments and remarks set forth above. Applicant respectfully requests reconsideration and favorable action in this case.

Applicant believes there are no fees due at this time, however, the Commissioner is hereby authorized to charge any fees to Deposit Account No. 50-2148 of Baker Botts L.L.P. in order to effectuate this filing.

If there are any matters concerning this Application that may be cleared up in a telephone conversation, please contact Applicant's attorney at 512.322.2548.

Respectfully submitted,

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